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8 *Properties, Inc.*

The Hon. Brian D. Lynch  
Chapter 11  
Location: Courtroom 1  
Hearing Date: January 24, 2018  
Time: 9:00 a.m.  
Response Due: January 17, 2018

9 UNITED STATES BANKRUPTCY COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT TACOMA

12 Olympia Office, LLC, a New York limited  
13 liability company,

14 Debtor

No. 17-44721-BDL

RECEIVER'S RESPONSE TO DEBTOR'S  
MOTION TO TERMINATE  
ENGAGEMENT OF JSH PROPERTIES,  
INC.

15 The Debtors seek to terminate the receivership engagement of JSH Properties, Inc.  
16 ("JSH") and JSH's management of the portfolio of office properties held by the Debtors  
17 (the "**Properties**"). Ultimately, JSH serves at the pleasure of the parties and this Court and  
18 does not take a position on the substantive relief requested by the Debtors. The Debtors'  
19 motion, however, contains a variety of erroneous factual assertions which the JSH is obliged  
20 to correct for the record.

21 **BACKGROUND**

22 1. In May, 2016, JSH was appointed custodial receiver for the various  
23 Washington real properties owned by the Debtors' predecessor, CDC Properties I, LLC,

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25 RECEIVER'S RESPONSE TO DEBTOR'S MOTION TO  
TERMINATE ENGAGEMENT OF JSH PROPERTIES,  
INC. – 1

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1 before they were acquired by the Debtors in late September, 2016. At the time of JSH's  
2 appointment, the CDC portfolio suffered from high vacancy rates and significant deferred  
3 maintenance issues.

4           2. Since its appointment, JSH has worked diligently to stabilize the properties  
5 by renewing several key leases with various Washington State agencies. JSH is in  
6 negotiations with the State to renew several more. JSH also engaged contractors to perform  
7 deferred maintenance work.  
8

9           3. JSH has also worked diligently to allay the concerns of tenants that have been  
10 unhappy with the poor maintenance practices of the Debtors' predecessor, CDC Properties,  
11 and concerned about the transfer of ownership to the Debtors, the NY Bankruptcy and now  
12 this case.  
13

14           4. Initially in the NY Bankruptcy, JSH continued to serve as custodial receiver  
15 for the Properties pursuant to stipulation by Debtors and Midland. Later in the NY  
16 Bankruptcy, the Debtors sought to terminate JSH based on the same arguments offered  
17 again here. Ultimately, the parties resolved the Debtors' motion to remove JSH by again  
18 stipulating to JSH continuing to serve as receiver under State Court Receiver Order, but  
19 without the \$5,400 monthly Receiver Fee.  
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## 21 **RESPONSE**

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25 **RECEIVER'S RESPONSE TO DEBTOR'S MOTION TO  
TERMINATE ENGAGEMENT OF JSH PROPERTIES,  
INC. – 2**

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1           1.     Breach of Fiduciary Duty. The Debtors argue that JSH has breached its  
2 fiduciary duties and should be terminated and replaced with a property manager selected by  
3 the Debtors. The Debtors further argue that replacing JSH is necessary to preserve the value  
4 of the Properties in preparation for an orderly marketing and sale. The Debtors made similar  
5 arguments in the NY Bankruptcy, alleging that JSH was guilty of waste and  
6 mismanagement. What the Debtors characterize as waste and mismanagement, JSH would  
7 characterize as prudent property management consistent with JSH's obligations under the  
8 State Court Receiver Order. Stabilizing the properties requires leasing vacant space and  
9 extending the leases of existing tenants which are set to expire in the near term. In the NY  
10 Bankruptcy, the Debtors preferred to sell the Properties as is and let the buyers deal with the  
11 expense of dealing with the tenants. In JSH's judgment, that is not likely to preserve or  
12 enhance the value of the Properties. In JSH's professional judgment, selling Properties with  
13 vacancy and short term leasing risk is likely to result in a lower sales price.

16           2.     Purchase Offers. In cases like these, receivers often receive unsolicited  
17 inquiries and low ball offers from potential buyers. In JSH's judgment, buyers interested in  
18 "distressed" properties are typically trying to acquire assets at a substantial discount from  
19 their fair market value. More to the point, JSH has never had the authority under the State  
20 Court Receiver Order, in the NY Bankruptcy or in this case to market or sell any of the  
21 Properties.  
22

25 RECEIVER'S RESPONSE TO DEBTOR'S MOTION TO  
TERMINATE ENGAGEMENT OF JSH PROPERTIES,  
INC. – 3

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1           3.     “Give Away” Lease Renewals. The Debtors object to a lease that JSH  
2 negotiated prior to the commencement of the NY Bankruptcy. During the NY Bankruptcy  
3 and since the Petition Date, JSH has not entered into any lease agreements or amendments  
4 without the express approval of the Debtors and Midland. As noted above, the Debtors have  
5 a markedly different view of prudent property management than that of JSH. To the extent  
6 that the Debtors disapprove of a prospective lease agreement or renewal, JSH has not and  
7 will not execute any such agreement without an order from this Court.  
8

9           4.     Projections. Forecasting expenses can be challenging, particularly with a  
10 portfolio with a number of vacancies, construction in process and leases that are set to expire  
11 in the near term. The Debtors complain that JSH overestimated the cash needs for the  
12 portfolio during the NY Bankruptcy. As JSH explained to the Debtor and Midland on  
13 numerous occasions, weather delays, failure of tenants to request payment of tenant  
14 improvement allowances and slow billing by contractors spread out the construction costs  
15 over a longer period than expected. As a result, JSH was able to fund construction expenses  
16 out of cash flow. Although the extended timeline for payment eliminated the cash crunch, it  
17 was unanticipated. At the time, in JSH’s judgment, the best course of action was to make  
18 sure that there was adequate cash available to fund costs on the shorter anticipated timeline  
19 and leave adequate reserves for unexpected expenses. Again, what the Debtors characterize  
20 as waste and mismanagement is simply prudent property management.  
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RECEIVER’S RESPONSE TO DEBTOR’S MOTION TO  
TERMINATE ENGAGEMENT OF JSH PROPERTIES,  
INC. – 4

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DATED this January 16, 2018.

/s/ Charles E. Shigley  
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JSH Properties, Inc.

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